IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32 (2) (b))

Description of the Case.

Criminal Appeal No.257 of 2002 decided on 16.6.03

Chandra Mohan Singh
Vs
State

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date 16-06-2003 Initial of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Reserved

Criminal appeal no. 257 of 2002.

Chandra Mohan Singh - Appellant

Versus

State of Uttaranchal - Respondent

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Hon. P.C.Verma, ACJ.
Hon. Irshad Hussian, J.

(Delivered by Hon. Irshad Hussain, J.)

This appeal is directed against the judgment and order dated 04.10.2002 passed in session trial no.17 of 1998 by the then Sessions Judge, Chamoli convicting the appellant under section 302 of the I.P.C. and sentencing him to imprisonment for life and to pay a fine of Rs. 25,000.00

The prosecution case briefly is that deceased Dalbir Singh resident of village Paingarh Patti Tharali, tehsil Tharali district Chamoli went to deliver oxen at the house of his relative at 3:00 P.M. on 21.04.1997 and he was to return to his house the same day via village Harmani. While he was in Harmani appellant Chandra Mohan Singh alias Duli had a quarrel with his at the shop of Raghuvir Singh Bhandari (P.W.4) and after assault even gave a threat to kill him. Khushal Singh (P.W.3) had intervened in the altercation and pacified both of them. At about 7:00 P.M. deceased Dalbir Singh left for his home accompanied by his co-villagers Kunwar Singh (P.W.5) and Udey Singh. They together came right upto the vicinity of Palgaon Tok, halmet of village Paingarh where after deceased parted company and moved onward his house. It is also the case of the prosecution that on 22.04.1997 at about 6:00 A.M. deceased Dalbir Singh was seen in grievously injured state laying in a ravine (GADHERA) near culvert of village Paingarh. On getting information Smt. Radha (P.W.2) a niece of the deceased reached there and on her query injured Dalbir Singh told her that he had been assaulted by the appellant. Dalbir Singh was taken by the

villagers for medical aid but he succumbed to his injuries before reaching Rudraprayag. According to prosecution on three earlier occasions the appellant made attempts to assault the deceased by wielding 'Khukhari' and used to give threats to kill him. The deceased is also alleged to have told his family members that his life is in danger at the appellant, due to some land dispute.

With these allegations the written F.I.R. was got prepared by Smt. Sundari Devi (P.W.1) the widow of the deceased on 23.04.1997 and was it was sent to the concerned Patti Patwari through its scribe Harendra Singh Negi. Case crime no.1 of 1997 under section 302 of the I.P.C. against the appellant was registered at 10.00 A.M. on 23.04.1997 vide check F.I.R. (Ext.ka.13) and General Diary report no.35 of the date (Ext.ka.14).

It is also the case of the prosecution that Pooran Pratap Singh (P.W.6) Pradhan of village Paingarh, submitted a written information about the unnatural death of the deceased to the Patti Patwari. The written information (Ext.Ka.6) was handed over by him to the Patti Patwari at about 5-6 P.M. on 22.04.1997. It was mentioned that Dalbir Singh was found in injured state in the morning at about 6:00 A.M. in a ravine and with the help of the villagers he was taken to C.H.C. Karnprayag for medical aid. However the medical officer referred the injured to Dehradun and while he was being shifted he breathed his last before reaching Rudraprayag. The villagers then took the dead body of Dalbir Singh to Harmani bazaar where it was kept before his family members and others.

After receiving the information Patti Patwari Debi Prasad (P.W.8) reached at that place and held inquest on the dead body and prepared inquest report (Ext.ka.8). Other relevant papers were also prepared and the dead body in packed and sealed state was sent for postmortem which was conducted at 11:00 A.M. on 23.07.1997 by Dr. Vinod Kumar Dhondhiyal (P.W.7) district hospital Gopeshwar.

The Patti Patwari in connection with the investigation of the case also prepared site-plan of the scene of the occurrence and recorded the statements of the witnesses. Lateron the investigation of the case was entrusted to civil police on 10.06.1997 and on completion of the investigation charge-sheet

(Ext.ka.18) against the appellant was submitted by N.S.Negi, S.H.O. of P.S. Karnprayag district Chamoli.

At the trial prosecution examined eight witnesses to bring home guilt to the appellant. P.W.1, the informant Smt. Sundari Devi narrated the story as given in the written F.I.R., Ext.ka.1 besides claiming that in her presence her husband Dalbir Singh told Smt. Radha that he was assaulted by the appellant Chandra Mohan Singh. She admitted in the cross-examination that in the written F.I.R., Ext.ka.1 it is not mentioned that she had accompanied her daughter to the place where her husband was found lying in injured state. P.W.2, Smt. Radha Devi niece of the deceased gave evidence to support the version of the F.I.R., Ext.ka.1. P.W.3, Khushal Singh; P.W.4, Raghuvir Singh and P.W.5, Kunwar Singh are the witnesses of the quarrel which took place between the deceased and the appellant in Harmani bazaar prior to the deceased leaving that place for his home alongwith P.W.5. P.W.6 Pooran Pratap Singh, Pradhan gave information as mentioned above and besides proving the same as Ext.ka.6 gave out that on 21.04.1997 at about 10:30 P.M. he had prepared a certificate on the instruction of the appellant that deceased Dalbir Singh had been giving him threat in regard to the land dispute. The certificate, Ext.ka.2 is alleged to have been recovered from the possession of the appellant on his arrest on 24.04.1997 vide memo. Ext.ka.17, prepared by the investigating officer of the case.

P.W.7, Dr. Vinod Kumar Dhondhiyal on performing the postmortem on the dead body of the deceased Dalbir Singh prepared postmortem report, Ext.ka.3. Following antemortem injuries were detected:-

1.Contusion on right hip joint 10 cm. X 10 cm. in size;

2.Multiple abrasions of various size and shape on the trunk;

3.Lacerated wound on left parietal region of skull 5 cm. X 2 cm. X bone deep

4.Lacerated wound on right parietal region of skull 5 cm. X 3 cm. X bone deep;

5.Lacerated wound on occipital region of skull 6 cm. X 3 cm. X bone deep;

On internal examination skull and scalp underneath injuries nos.3, 4 and 5 were fond fractured and in the opinion of the medical officer the death

of the deceased was caused due to haemorrhage as a result of antemortem injuries about a day ago.

P.W.8, Dr. Rajeev Sharma was posted at C.H.C. Karnprayag on 22.04.1997 and according him Dalbir Singh was brought there at about 8:30 A.M. in unconscious injured state and remained there for one and a half hour. The persons those brought the injured told him that the injured had a fall from height yesterday at about 9 P.M. and since then the injured is in coma and unconscious state. Considering the serious condition of the injured he was referred to neurological unit and discharge slip, Ext.ka.4 was prepared by the medical officer. He also gave certificate of reference in relation to the said injured and the same is Ext.ka.5 on record.

P.W.9, Devi Prasad, Patrti Patwari has investigated the case before investigation was given to civil police on 10.06.1997 Steps taken by him have been referred above. According to him, discharge slip, Ext.ka.4 was handed over to him by witness Khushal Singh. He testified that certificate, Ext.ka.2 was seized from the pocket of the appellant on his arrest. He recorded the statement of the witnesses. As stated above the charge-sheet was finally submitted by the civil police on 16. 08.1997.

The appellant did not admit the accusations of the prosecution and claimed that he has been falsely implicated due to enmity. He also gave out that since his family have taken up residence and settled in their material grand-father house the family members of the deceased got displeased with him. He has not adduced any evidence in defence.

Learned Sessions Judge recorded the conviction of the appellant on two incriminating circumstances and oral dying declaration of the deceased by observing that the circumstances that the appellant had an altercation and assaulted the deceased in the evening of the occurrence and further that he obtained a certificate from the Pradhan showing that the deceased had shown indecency towards him in connection with land dispute and gave him threat disturbing him and his family members were established satisfactorily from disturbing him and his family that the oral dying declaration given by the deceased inspire confidence and support the case of the prosecution .

Heard Sri Rajendra Kotiyal, learned counsel for the appellant, Sri Pankaj Purohit, learned counsel for he complainant and the learned Government Advocate.

As referred to above the case of the prosecution rests solely on the incriminating circumstances and oral declaration of the deceased. The incriminating circumstances are: (1) the deceased was assaulted by the appellant on an altercation in the evening of 21.04.1997 in the bazaar of Harmani village and was also given threat to be killed by the appellant and (2) the appellant visited the house of Pradhan Pooran Pratap Singh (P.W.6) late in the night at about 10:30 P.M. on 21.04.1997 and obtained a certificate, Ex.ka.2 showing that the deceased Dalbir Singh gave him threat in regard to some land dispute and this had disturbed him and his family members.

Before proceeding to scrutinize the incriminating circumstances relied upon by the prosecution, it is desirable to state that the legal proposition as to when conviction can be recorded on circumstantial evidence has been settled by a catena of decisions of the apex court and the different High Courts. The legal position has also recently been reiterated by the apex court in the case of **Mohibur Rahman and another Vs. State of Assam, 2002 AIR SCW 3523.** The Hon'ble Judges observed that:-

> "it is well settled by a catena of decisions of this Court that in order to find convictions on circumstantial evidence each of the incriminating pieces of circumstantial evidence should be proved by cogent and reliable evidence and the Court should be satisfied that the proved pieces of circumstantial evidence taken together forge such a chain wherefrom no inference other than of guilt can be drawn against the accused persons or, in other words, the proved pieces of circumstantial evidence should not be capable of being explained on any hypothesis other than the guilt of the accused.".

So far the first incriminating circumstance is concerned, the case of the prosecution was that the appellant had a quarrel with the deceased and assaulted him at the shop of Raghuvir Singh (P.W.4) when two other witness, Khushal Singh (P.W.3) and Kunwar Singh (P.W.5) were also present. The occurrence is said to have taken place something in the evening of 21.04.1997 when the appellant also gave threat to kill the deceased. Both

the appellant and the deceased were pacified by the intervention of these witness.

Learned counsel for the appellant submitted that the evidence of above three witnesses does not inspire confidence and learned Sessions Judge fell in error in accepting their evidence and observing that the incriminating circumstance which is a link in the chain of circumstances to prove the guilt of the appellant stand established. Having gone through the evidence of these witnesses and the material on record the submissions of the learned counsel appear forceful and no implicit reliance could have been placed on the evidence of these witnesses. The reasons are that one of these three witnesses Kunwar Singh (P.W.5) is the brother-in-law of the deceased and according to the informant Smt. Sundari Devi (P.W.1) this witness gave her information about the incident of Harmani bazaar in which appellant assaulted the deceased and gave threat to kill him. Kunwar Singh happened to reach the ravine in the morning of 22.04.1997 where the deceased was allegedly lying injured in the early morning hours. This witness took the said injured alongwith the Pradhan (P.W.6) and others to C.H.C. for medical aid and also brought the dead body of the deceased back to the village after the deceased had succumbed to his injuries on way to Dehradun. When the dead body was brought to the village the Pradhan (P.W.6) gave information in writing about the unnatural death to the concerned Patti Patwari in the evening hours on 22.04.1997 and the same is Ext.ka.6 on the record. At about 7 P.M. that day the inquest on the dead body was held where witnesses Kunwar Singh; Pradhan Pooran Pratap Singh and Khushal Singh were also present. It does not stand to reason as to why witness Kunawar Singh had not told the Pradhan about the incident of village Harmani when the information in writing, Ext.ka.6 was prepared and handed over to the Patti Patwari for necessary action according to law. Strangely enough the fact of disclosure of the incident of Harmani Bazar for the first time came to be mentioned in the much delayed written F.I.R, Ext.ka.1 which was lodged with the Patti Patwari on 23.04.1997 at 10:00 A.M. When the death of Dalbir Singh was caused due to injuries and witness Kunwar Singh having been there throughout his conduct is not telling about the incident of

Harmani bazar to the Pradhan on 22.04.1997 even till the preparation of the written information, Ext.ka.6, tells upon his credibility and in the peculiar circumstances of the case it could safely be said that witness Kunwar Singh is a got-up witness and was so nominated on account of his relationship with the deceased.

Witness Khushal Singh (P.W.3) also said to be the witness of the incident of Harmani bazar remained present when the inquest was held on the dead body on 22.04.1997 as is evident from his signatures on the inquest report. He is the real brother of Pradhan Pooran Pratap Singh and there can be no gain-saying that he too was also aware of the fact that the deceased was removed in injured state from the ravine in the early morning of 22.04.1997 and after the deceased succumbed to his injuries written information, Ext.ka.6 was sent by his Pradhan brother to the Patti Patwari. In view of his keeping silence about the incident it would not be safe to place reliance on his evidence also. There remains to be considered to evidence of Raghuvir Singh (P.W.4) on whose shop the quarrel between the appellant and the deceased is alleged to have taken place on 21.04.1997. This witness gave out that when the quarrel took place appellant had damaged the belongings of his shop thereby causing a loss of Rs.10-12 thousands. He admitted that there is a Patwari in village Harmani also and despite such a big loss he had not reported the matter to Patti Patwari. According to him in the fight appellant Chandra Mohan Singh gave fist blows to Dalbir Singh who sustained bleeding injures on the nose and mouth. No such claim had been made by other two witnesses Khushal Singh and Kunwar Singh and thus the evidence of the witness appear shaky and discrepant hand in the peculiar circumstances of the case no reliance could therefore safely be placed on the evidence of this witness also.

For the above reasons no implicit reliance could be place on the evidence of these witnesses and the incriminating circumstances referred above has not been established beyond doubt.

In regard to the second incriminating circumstance about the certificate, Ext.ka.2 again the evidence of the prosecution is not trustworthy and convicting. A bare reading of certificate, Ext.ka.2 indicate that a

literate person like the Pradhan Pooran Pratap Singh (P.W.6) would not agree to prepare a certificate on the asking of a person that some other person is entertaining grudge against him due to some land dispute and his family is feeling disturbed by the threat given in that regard. No prudent person would prepare such a certificate and it cannot be believed that on the request of the appellant the certificate was prepared by the said witness at about 11:00 P.M. on 21.04.1997 and was handed over the appellant. It is also significant that investigating officer Patti Patwari Debi Prasad (P.W.9) clamed that this certificate was found in the pocket of the appellant. It is also significant that investigating officer Patti Patwari Debi Prasad (P.W.9) claimed that this certificate was found in the pocket of the appellant when arrest was effected on 24.04.1997 and memo. of arrest and recovery, Ext.ka.17 was then prepared. The arrest and recovery is reported to have been made in the presence of witnesses Pradhan Pooran Pratap Singh, Kunwar Singh and Khushal Singh besides others and strangely enough none of these three witnesses examined in the case gave out that such a certificate was recovered from the pocket of the appellant. They even do not say about the arrest of the appellant on 24.04.1997. In the face of the facts of the case the mere statement of investigating officer cannot therefore safely be believed to connect the certificate, Ext.ka.2 with the appellant so as to show that on 21.04.1997 before preparation of this certificate some altercation had taken place between the appellant and the deceased.

This aspect of the matter may also be considered by a another angle. Pradhan Pooran Pratap Singh had submitted written information, Ext.ka.6 to the Patti Patwari in the evening of 22.04.1997 when everything about the incident must have come to his knowledge and still no mention of the certificate was made in the said written information. If the appellant were to visit his place and he were to issue such a certificate in all probability he was expected to have mentioned about his in the written information sent to the Patti Patwari. This conduct of the witness also militate against his testimony and in the totality of circumstances of the case no implicit reliance can safely be place on his evidence that things happened so and he issued a certificate to the appellant. In the peculiar circumstances of the case we are of the view that the document was fictitiously prepared to create evidence against the appellant and its recovery was therefore falsely shown form the pocket of

the appellant at the time of his alleged arrest. In a situation like this the incriminating circumstances under discussion has not been found established by the material on record.

There remains to be considered acceptability of oral dying declaration said to have been made by the deceased Dalbir Singh to his niece Smt. Radha Devi ((P.W.3). Before scrutinizing the evidence in this regard it is desirable to state that conviction can be based on a dying declaration once the court is satisfied that the dying declaration was true and voluntarily made and the maker of the same was in a fit state of mind. In the case of **Panch Deo Singh Vs. State of Bihar, AIR 2002, S.C., 526** the apex court laid stress that in a dying declaration the deceased must evoke confidence of the court that it was given voluntarily and in a fit state of mind and without being influenced by any extraneous influence. Having carefully examined the evidence on record in this regard we are of the considered view that the dying declaration does not inspire confidence in its truthfulness and also the ability as the fit state of mind of the maker. Smt. Radha Devi (P.W.2) gave out that when she reached in the ravine Dalvir Singh was breathing slowly while bleeding form the nose and mouth and on her patting and query Dalbir Singh told that he had been assaulted by Chandra Mohan Singh (the appellant). She also stated that she had told this thing to the co-villagers who have assembled there at that time. The claim made by the witness is unbelievable because had it been so the reference could have naturally been made in the written information, Ext.ka.6, which was prepared and submitted by the Pradhan Pooran Pratap Singh late in the evening of that day, i.e. 22.04.1997. Kunwar Singh (P.W.5) had also reached there and he stated that Dalbir Singh was lying unconscious and who even failed to give any response even on being touched bodily by him, although this witness claimed that Smt. Radha, her sister and informant Sundari Devi told him and claimed that time that Dalbir Singh had told that he had been assaulted by Chandra Mohan Singh (the appellant). If any such treatment were to be given by Dalbir Singh the witness or any other person present there would have also heard and taken note of the declaration. Since it is not the case it

weill not be safe to place reliance on the uncorroborated statement of Smt. Radha Devi.

Informant Smt. Sundari Devi (P.W.1) also claimed that when the oral dying declaration was made by Dalbir Singh she was also there alongwith Smt. Radha Devi and others. This version is not supported by the F.I.R., Ext.ka.1 wherein it had been mentioned that Radha Devi had visited the scene and on her query oral dying declaration referred to above was made by the injured Dalbir Singh. Witness also admitted this material omission in the F.I.R. and in the peculiar circumstances of the case no implicit reliance can therefore also be placed on the evidence of this witness.

Medical evidence in the case in regard to the state of mind and ability of the declarer to give oral dying declaration is also very material. Dr. Rajeev Sharma (P.W.7) got admitted the injured Dalbir Singh at P.H.C. Karnprayag at about 8:30 A.M. on 22.04.1997 and the injured was given medical aid there. The persons those brought the injured there told him that the injuries were sustained by a fall from height previous night at about 9:00 P.M. and since then the injured is unconscious. The witness has also on medical examination found the injured in deep shock and in coma which in the medical term was “glass-gow coma, scale E1 M1V1 =3”. The injured was unable to open his eyes and was even unable to register any sign of speech. The injured considering his serious condition was referred to neurological surgical centre for further management. The medical officer had also prepared discharge slip, Ext.ka.4 and certificate of reference, Ext.ka.5 The medical evidence shows that Dalbir Singh was, on account of his serious injuries, in a state of coma and he was unconscious when brought to the dispensary and was reported to be in such a state of mind right from the previous night when he sustained injuries. In other words the injured was not in a fit state of mind to give any dying declaration. Reference is also be made to the evidence of Dr. Vinod Kumkar Dhodhiyal (P.W.7) who performed postmortem on the dead body of the deceased as a result of the antemortem injuries, skull bones underneath injuries 3, 4 and 5 were found fractured which indicate that grievous head injures were sustained by the deceased and in all probability he remained in coma and in an

unconscious state right form the time he sustained the injures which proved fatal. It could not be, by any reasoning, accepted that the deceased having sustained grievous head injures was able to speak and give oral dying declaration the next morning of 22.04.1997 at about 6 A.M. From the circumstances it clearly appear that the theory of he oral dying declaration was also set up fictitiously after due deliberations and consultations when the delayed F.I.R. of the case was got to be lodged on 23.04.1997 at 10:00 A.M.

Genuineness and reliability of the written F.I.R. (Ext.ka.1) as well as its admissibility under section 154 of the Code of Criminal Procedure were also adversely commented upon by the learned counsel for the appellant. Even if the same is accepted to be an F.I.R. within the meaning of section 154 of the Code of Criminal Procedure its reliability and genuineness stand assailed form the facts and circumstances of the case and this aspect of the matter also indicate that the claim of the prosecution is false and the version is concocted one. There is no doubt that the F.I.R. is delayed one and no explanation whatsoever had been given form the side of the prosecution. The consequences of a delayed F.I.R. were succinctly discussed by the apex court in the case of **Thulia Kali Vs. State of Tamil Nadu, (1972) 3 SCC, 393,** wherein it had been observed that-

> "First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of account of delay, the repot not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging of the first information report should be satisfactorily explained."

The consequences of the delayed F.I.R. referred to above in the reported judgment are also writ large in the instant case. This evidence in regard to the circumstances sought to be established against the appellant as well as oral dying declaration of the deceased clearly indicate that these were the outcome of an afterthought as a result of the F.I.R. of the case fabricated due to deliberations and consultations and the same make a further dent in the prosecution evidence and its credibility. It is not in dispute that there was some dispute in regard to the landed property between the family of the deceased and the appellant and this fact was also mentioned in the F.I.R. Considering the inference that that the F.I.R. is an outcome of deliberations and consultations the possibility cannot be ruled out that the appellant was roped in falsely on account of mere suspicion when none had seen the incident ion which the deceased sustained injuries which proved fatal.

On consideration of the totality of facts and circumstances of this case, evidence and the material on record we are of the considered view that the circumstances as relied upon by the prosecution have not been established and the oral dying declaration of the deceased also not being acceptable the appellant could not have been held guilt committing the offence with which he had been charged in this case.

In the result we allow the present appeal and set aside the conviction and sentence dated 04.10.2002 passed by Sessions Judge, Chamoli against the appellant and acquit him of the charge under section 302 of the I.P.C. Appellant is in jail. He shall be set at liberty forthwith if not wanted in connection with some other case.

16, June 2003./B.

(Hon. Irshad Hussain, J.) **(Hon. P.C. Verma, ACJ.)**